

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIVA AVIKAIDA ISRAEL,
Plaintiff,
v.
C. McCLELLAND, *et al.*,
Defendants.

No. 2:22-cv-00729-KJM-EFB (PC)

ORDER AND AMENDED SCHEDULE

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The action proceeds on plaintiff's amended complaint, alleging procedural due process, retaliation, and mail interference claims. ECF Nos. 7, 9. Currently pending is plaintiff's request for an extension of time, which defendants oppose. ECF Nos. 35, 36. The court will deny the request as moot and direct the parties to resume litigation of this action according to the schedule provided below.

I. Background

In an earlier motion to stay the case, plaintiff informed the court that she has suffered from impaired cognitive functioning since late June 2023 due to schizophrenia and epilepsy. ECF No. 25-1. Other factors have also impacted her ability to litigate this case. *Id.* "At present, memory loss, palpitations, black-outs, trauma dissociation reactions, metabolic disorder, and cognitive impairment medically obstruct plaintiff from" litigating this action "for at least 4-5 months,

1 according to her medical and MH providers.” *Id.*

2 Plaintiff’s motion raised the issue of her competence. The court was required to address
3 this potential issue, because Federal Rule of Civil Procedure 17(c)(2) requires the court to
4 “appoint a guardian ad litem – or issue another appropriate order – to protect a minor or
5 incompetent person who is unrepresented in an action.” While the court has discretion to craft
6 such an order, an indefinite stay of proceedings is an abuse of discretion where it appears that the
7 litigant will not regain competency in the future. *Davis v. Walker*, 745 F.3d 1303, 1311 (9th Cir.
8 2014).

9 As an interim measure, the court vacated all pending deadlines in this case and ordered the
10 parties to submit status reports indicating the current state of discovery (including any attempts to
11 meet and confer), whether plaintiff has been granted access to her legal materials and other
12 materials necessary to litigate, and plaintiff’s ability to litigate the action going forward.

13 In a status report dated December 13, 2023, defense counsel informed the court that
14 plaintiff had expressed interest in pursuing settlement of this action during a settlement
15 conference set to occur on February 6, 2024 in *Israel v. Gibbs*, E.D. Cal. Case No. 2:21-cv-
16 02129-AC. ECF No. 29. Counsel asked the court to stay the case until that conference and, if the
17 case failed to settle, the parties would submit updated status reports to the court.

18 The *Gibbs* case settled, but the parties did not substantively address the instant action at
19 the February conference before Magistrate Judge Cota. ECF No. 34, 40. Judge Cota told the
20 parties that he would give scheduling priority to them, should they wish to return to conduct a
21 settlement conference for this action. ECF No. 40 at 7. It does not appear that the parties pursued
22 further settlement conference with Judge Cota.

23 On May 13, 2024, plaintiff filed a motion for a temporary restraining order. ECF No. 30.
24 In an Order and Findings and Recommendations issued on November 7, 2024, the court directed
25 plaintiff to file a status report regarding her ability to resume litigation of this action within 21
26 days. ECF No. 32. Plaintiff filed objections to the Findings and Recommendations in which she
27 represented that she was preparing to file the status report on December 1, 2024. ECF No. 33.
28 To date, no status report has been filed. Most recently, plaintiff has filed a motion requesting an

1 extension of time to respond to “any and all filings” in this case. ECF No. 35. Defendants
2 oppose the request. ECF No. 36. They argue that plaintiff has been selectively litigating in this
3 case to buy herself time, when needed, to pursue a multiplicity of other lawsuits and that the court
4 should order plaintiff to show cause why she should not be sanctioned for failing to file the status
5 report ordered by the court on November 7.

6 **II. The Motion for Extension of Time**

7 There are no pending deadlines in this case. As defendants note, the only possible
8 deadline that could be extended is the one governing plaintiff’s status report, which was due at the
9 end of November 2024. Thus, plaintiff’s motion for an extension of time will be denied as moot.
10 Although plaintiff has not provided the court with a status report, the court takes judicial notice of
11 plaintiff’s December 5, 2024 filing in *Israel v. Brownstein*, E.D. Cal. Case No. 2:21-cv-0262-
12 TLN EFB, appearing at ECF No. 93, in which plaintiff stated that she was prepared to proceed
13 with that action. If plaintiff’s health issues allow her to proceed with her other cases, and absent
14 any filing from plaintiff indicating otherwise, the court presumes that plaintiff is prepared to
15 proceed in this action as well.

16 **III. ORDER**

17 For those reasons, it is hereby ORDERED that:

- 18 1. Plaintiff’s December 23, 2024 motion for extension of time (ECF No. 35) is DENIED.
- 19 2. The case shall proceed according to the scheduling order issued on May 5, 2023,
20 amended as follows:
 - 21 a. The parties may conduct discovery until April 18, 2025. Any motions
22 necessary to compel discovery shall be filed by that date. All requests for
23 discovery pursuant to Fed. R. Civ. P. 31, 33, 34, or 36 shall be served not
24 later than March 21, 2025.
 - 25 b. Dispositive motions shall be filed on or before June 20, 2025.
 - 26 c. Unless otherwise ordered, all motions to dismiss, motions for summary
27 judgment, discovery motions, and motions made under the authority of
28 Fed. R. Civ. P. 7, 11, 12, 15, 41, 55, 56, 59 and 60, and Local Rule

1 (“L.R.”) 110 shall be briefed in accordance with L.R. 230(l). Failure to
2 timely file an opposition or statement of no opposition to such a motion
3 may be deemed a waiver of opposition to the motion and may result in the
4 imposition of sanctions. L.R. 230(l). Oppositions to all other motions
5 need to be filed only as directed by the court.

- 6 d. The court will schedule pretrial proceedings, if necessary, upon the
7 resolution of any pretrial motions filed. Requests to modify this schedule
8 will be looked upon with disfavor and must be supported by good cause
9 pursuant to Fed. R. Civ. P. 16(b).

10 So ordered.

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12 Dated: January 21, 2025

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14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
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